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OFFICE OF PETITIONS

In re
Knape, et al.
Application No. 09/776,787
Filed: February 4, 2003
Patent No. 6,974,577
Issued: December 13, 2005

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT", filed January 10, 2006. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred seventy-five (575) days to six hundred sixty-four (664) days.

The application for patent term adjustment is GRANTED.

The Patent Term Adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **six hundred sixty-four (664) days**.

On August 1, 2005, applicants timely submitted an application for patent term adjustment pursuant to their duty of candor and good faith, alerting the Office to an error in applicants' favor with respect to the number of days of patent term adjustment. The "candor letter" was not acted upon, and on December 13, 2005 the application issued into patent No. 6,974,577 with a patent term adjustment of five hundred seventy-five (575) days.

The Office determined a patent term adjustment of five hundred seventy-five (575) days based on an adjustment for PTO delay of four hundred forty-nine (449) days pursuant to 35 U.S.C. 154(b)(1)(A)(i)

and 37 C.F.R. § 1.703(a)(1), two hundred thirty-four (234) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. 1.703(a)(2), and twelve (12) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. § 1.703(a)(6), reduced by Applicants' delay of one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(10). The adjustment of 120 days is at issue.

Patentees point out that they were improperly assessed applicant delay of one hundred twenty (120) days for filing the application for patent term adjustment on August 1, 2005.

Pursuant to 37 C.F.R. § 1.704(e), the submission of an application for patent term adjustment will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application.

Furthermore, as pointed out by applicants, they should have been assessed delay of thirty-one (31) days pursuant to 37 C.F.R. §1.704(b) for filing a late response to a Notice to File Missing Parts mailed April 30, 2001. Applicants filed a complete reply on August 30, 2001, made timely with a two month extension of time. Accordingly, applicants should have been assessed delay of thirty-one (31) days for this filing.

In view thereof, the correct determination of patent term adjustment at the time of issuance of the patent is **six hundred sixty four (664) days** (695 (449+234+12) days of PTO delay, reduced by 31 days of applicant delay).

Given the basis for granting this petition, the \$200.00 fee set forth in 37 C.F.R. §1.18(e) has been refunded to Deposit Account No. 19-0134.

The application file is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction, indicating a Patent Term Adjustment of **six hundred sixty-four (664) days**.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,974,577 B2

DATED : December 13, 2005

INVENTOR(S) : Knape, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (575) days

Delete the phrase "by 575 days" and insert – by 664 days—